

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2098

Introduced by Assembly Member Maienschein

(Principal coauthor: Senator Anderson)

~~(Coauthor: Coauthors: Assembly Member Members Baker and~~
Waldron)

(Coauthors: Senators *Bates*, *Beall*, *Cannella*, and *Fuller*)

February 17, 2016

An act to ~~amend~~ *amend, repeal, and add* Section 3042 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 2098, as amended, Maienschein. Child custody: preferences of child.

Existing law requires the court to consider and give due weight to the wishes of a child in making an order granting or modifying custody or visitation, if the child is of sufficient age and capacity to form an intelligent preference as to custody or visitation. Existing law also requires the court to permit a child who is 14 years of age or older to address the court regarding custody or visitation, unless the court determines that doing so is not in the child's best interests.

This ~~bill~~ *bill, commencing July 1, 2017*, would instead require the court to permit a child who is ~~7~~ *10* years of age or ~~older~~ *older, of his or her own volition*, to address the court regarding custody or visitation, unless the court determines that doing so is not in the child's best interests. *The bill would require the court to determine whether the child is addressing the court of his or her own volition and to provide the child with an age-appropriate form developed by the Judicial*

Council that explains to the child specified information prior to the child addressing the court regarding custody or visitation. The bill, commencing January 1, 2017, would require the Judicial Council, no later than July 1, 2017, to develop this age-appropriate form.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 3042 of the Family Code is amended to*
2 *read:*

3 3042. (a) If a child is of sufficient age and capacity to reason
4 so as to form an intelligent preference as to custody or visitation,
5 the court shall consider, and give due weight to, the wishes of the
6 child in making an order granting or modifying custody or
7 visitation.

8 (b) In addition to the requirements of subdivision (b) of Section
9 765 of the Evidence Code, the court shall control the examination
10 of a child witness so as to protect the best interests of the child.

11 (c) If the child is 14 years of age or older and wishes to address
12 the court regarding custody or visitation, the child shall be
13 permitted to do so, unless the court determines that doing so is not
14 in the child's best interests. In that case, the court shall state its
15 reasons for that finding on the record.

16 (d) Nothing in this section shall be interpreted to prevent a child
17 who is less than 14 years of age from addressing the court regarding
18 custody or visitation, if the court determines that *it* is appropriate
19 pursuant to the child's best interests.

20 (e) *No later than July 1, 2017, the Judicial Council shall develop*
21 *an age-appropriate form that explains to a child who elects to*
22 *address the court regarding custody and visitation all of the*
23 *following:*

24 (1) *The process of addressing the court.*

25 (2) *The opportunity to address the court should only be sought*
26 *if the child voluntarily chooses to do so.*

27 (3) *Possible reasons why a child may or may not want to address*
28 *the court.*

29 (4) *Alternative means of providing the court with the child's*
30 *input and other information regarding the child's preferences if*
31 *the child does not wish to address the court.*

1 ~~(e)~~

2 (f) If the court precludes the calling of any child as a witness,
3 the court shall provide alternative means of obtaining input from
4 the child and other information regarding the child's preferences.

5 ~~(f)~~

6 (g) To assist the court in determining whether the child wishes
7 to express his or her preference or to provide other input regarding
8 custody or visitation to the court, a minor's counsel, an evaluator,
9 an investigator, or a mediator who provides recommendations to
10 the judge pursuant to Section 3183 shall indicate to the judge that
11 the child wishes to address the court, or the judge may make that
12 inquiry in the absence of that request. A party or a party's attorney
13 may also indicate to the judge that the child wishes to address the
14 court or judge.

15 ~~(g)~~

16 (h) Nothing in this section shall be construed to require the child
17 to express to the court his or her preference or to provide other
18 input regarding custody or visitation.

19 ~~(h)~~

20 (i) The Judicial Council shall, no later than January 1, 2012,
21 promulgate a rule of court establishing procedures for the
22 examination of a child witness, and include guidelines on methods
23 other than direct testimony for obtaining information or other input
24 from the child regarding custody or visitation.

25 ~~(i) The changes made to subdivisions (a) to (g), inclusive, by~~
26 ~~the act adding this subdivision shall become operative on January~~
27 ~~1, 2012.~~

28 (j) *This section shall become inoperative on July 1, 2017, and,*
29 *as of January 1, 2018, is repealed, unless a later enacted statute,*
30 *that becomes operative on or before January 1, 2018, deletes or*
31 *extends the dates on which it becomes inoperative and is repealed.*

32 SEC. 2. Section 3042 is added to the Family Code, to read:

33 3042. (a) *If a child is of sufficient age and capacity to reason*
34 *so as to form an intelligent preference as to custody or visitation,*
35 *the court shall consider, and give due weight to, the wishes of the*
36 *child in making an order granting or modifying custody or*
37 *visitation.*

38 (b) *In addition to the requirements of subdivision (b) of Section*
39 *765 of the Evidence Code, the court shall control the examination*
40 *of a child witness so as to protect the best interests of the child.*

1 (c) *If the child is 10 years of age or older and wishes, of his or*
2 *her own volition, to address the court regarding custody or*
3 *visitation, the child shall be permitted to do so, unless the court*
4 *determines that doing so is not in the child's best interests. In that*
5 *case, the court shall state its reasons for that finding on the record.*

6 (d) *Nothing in this section shall be interpreted to prevent a child*
7 *who is less than 10 years of age from addressing the court*
8 *regarding custody or visitation, if the court determines that it is*
9 *appropriate pursuant to the child's best interests.*

10 (e) (1) *Prior to the child addressing the court regarding custody*
11 *or visitation, the court shall determine whether the child is*
12 *addressing the court of his or her own volition and shall provide*
13 *the child with an age-appropriate form developed by the Judicial*
14 *Council that explains to the child all of the following:*

15 (A) *The process of addressing the court.*

16 (B) *The opportunity to address the court should only be sought*
17 *if the child voluntarily chooses to do so.*

18 (C) *Possible reasons why a child may or may not want to*
19 *address the court.*

20 (D) *Alternative means of providing the court with the child's*
21 *input and other information regarding the child's preferences if*
22 *the child does not wish to address the court.*

23 (f) *If the court precludes the calling of any child as a witness,*
24 *the court shall provide alternative means of obtaining input from*
25 *the child and other information regarding the child's preferences.*

26 (g) *To assist the court in determining whether the child wishes*
27 *to express his or her preference or to provide other input regarding*
28 *custody or visitation to the court, a minor's counsel, an evaluator,*
29 *an investigator, or a mediator who provides recommendations to*
30 *the judge pursuant to Section 3183 shall indicate to the judge that*
31 *the child wishes to address the court, or the judge may make that*
32 *inquiry in the absence of that request. A party or a party's attorney*
33 *may also indicate to the judge that the child wishes to address the*
34 *court or judge.*

35 (h) *Nothing in this section shall be construed to require the*
36 *child to express to the court his or her preference or to provide*
37 *other input regarding custody or visitation.*

38 (i) *The Judicial Council shall promulgate a rule of court*
39 *establishing procedures for the examination of a child witness,*
40 *and include guidelines on methods other than direct testimony for*

1 *obtaining information or other input from the child regarding*
2 *custody or visitation.*

3 *(j) This section shall become operative on July 1, 2017.*

4 SECTION 1. ~~Section 3042 of the Family Code is amended to~~
5 ~~read:~~

6 ~~3042. (a) If a child is of sufficient age and capacity to reason~~
7 ~~so as to form an intelligent preference as to custody or visitation,~~
8 ~~the court shall consider, and give due weight to, the wishes of the~~
9 ~~child in making an order granting or modifying custody or~~
10 ~~visitation.~~

11 ~~(b) In addition to the requirements of subdivision (b) of Section~~
12 ~~765 of the Evidence Code, the court shall control the examination~~
13 ~~of a child witness so as to protect the best interests of the child.~~

14 ~~(c) If the child is seven years of age or older and wishes to~~
15 ~~address the court regarding custody or visitation, the child shall~~
16 ~~be permitted to do so, unless the court determines that doing so is~~
17 ~~not in the child's best interests. In that case, the court shall state~~
18 ~~its reasons for that finding on the record.~~

19 ~~(d) Nothing in this section shall be interpreted to prevent a child~~
20 ~~who is less than seven years of age from addressing the court~~
21 ~~regarding custody or visitation, if the court determines that is~~
22 ~~appropriate pursuant to the child's best interests.~~

23 ~~(e) If the court precludes the calling of any child as a witness,~~
24 ~~the court shall provide alternative means of obtaining input from~~
25 ~~the child and other information regarding the child's preferences.~~

26 ~~(f) To assist the court in determining whether the child wishes~~
27 ~~to express his or her preference or to provide other input regarding~~
28 ~~custody or visitation to the court, a minor's counsel, an evaluator,~~
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39 ~~promulgate a rule of court establishing procedures for the~~
40 ~~examination of a child witness, and include guidelines on methods~~

1 other than direct testimony for obtaining information or other input
2 from the child regarding custody or visitation.

3 (i) ~~The changes made to subdivisions (a) to (g), inclusive, by~~
4 ~~the act adding this subdivision shall become operative on January~~
5 ~~1, 2012.~~

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7 _____
8 CORRECTIONS:

9 Text—Page 4.

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